STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-580

February 24, 2000

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Central Maine Power
Company's Revenue Requirements
And Rate Design (Phase II-B)

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we approve a stipulation dated January 25, 2000, that establishes transmission and distribution (T&D) utility rates for Central Maine Power Company (CMP) effective March 1, 2000, the beginning of retail access to generation services in Maine. Under the terms of this Order, we expect that the average total rate for electricity for CMP's customers will decrease by 9.8% when compared to today's bundled rates.

II. BACKGROUND

The Commission initiated this docket more than two years ago, pursuant to the provisions of 35-A M.R.S.A. § 3208, for the purpose of setting stranded costs, T&D revenue requirements and ultimately T&D rates for CMP beginning March 1, 2000. In our Phase I Order in this case issued on March 19, 1999, we established CMP's cost of equity at 10.5% and its overall pre-tax cost of capital at 12.22%. We also established the principles and methodologies by which we would establish CMP's stranded costs and T&D rates. Due to the complexity of the issues, the Commission began this proceeding almost two and a half years prior to the date that T&D rates would actually take effect. We recognized in our Phase I Order that many items would need to be updated as part of a Phase II proceeding.

CMP submitted its Phase II filing on July 1, 1999. Parties filed responsive comments and the Advisory Staff issued its Phase II Bench Analysis. While almost all the issues regarding the setting of CMP's T&D rates were addressed either in the Phase I and Phase II decisions, crucial information was still unknown at the time the Commission decided the Phase II case. We noted in the conclusion of our Phase II Order:

> The interests of both the public and the Company will be served by waiting until the results of both the QF auction and the standard offer bid process are known, before committing to a particular course in areas such as amortization periods, where the Commission retains a considerable amount of flexibility. In several weeks we will conclude Phase II-B, the final phase of this proceeding. The Phase II-B proceeding

> will reflect the decisions reached here and in our Phase I Order and will also incorporate the results of the standard offer bid and QF bid processes. We will, at the conclusion of that proceeding, establish T&D rates for CMP to commence on March 1, 2000, the start of retail access to generation services in Maine.

CMP submitted its Phase II-B filing on December 11, 1999 and a revised II-B filing on January 11, 2000. On January 25, 2000, we received a stipulation entered into by the Company, the Office of the Public Advocate (OPA) and the Industrial Energy Consumers Group (IECG).[1]

The Stipulation is a comprehensive document that resolves the issues arising from the Company's Phase II-B filing as well as the issues which have arisen during the course of the restructuring process. In following section, we summarize what we consider to be the major provisions of the Stipulation.

III. DESCRIPTION OF THE STIPULATION

A. Resolution of Outstanding Litigation

In our Phase I Order, we concluded that as a matter of equity, CMP should be required to flow-back to ratepayers the Excess Deferred Income Taxes (EDITs) and Investment Tax Credits (ITCs) on its books related to the sale of its generation assets. However, in light of rulings by the Internal Revenue Service (IRS) on similar matters, the Commission was concerned that a flow-through of such benefits would be considered a violation of the IRS's normalization requirements and thus result in severe tax consequences for the utility. We therefore ordered CMP to request a Private Letter Ruling (PLR) on this matter and to allow the Commission and the OPA to fully participate in the PLR process. In compliance with our decision, CMP filed a request for a PLR on April 29, 1999. On January 6, 2000, the IRS issued a PLR to CMP which concluded that the flowback of any unamortized ITCs or EDITs related to the divested generation assets would violate the normalization rules.

Under the terms of the Stipulation, CMP will remove from its balance sheets the regulatory liabilities relating to the unamortized ITCs and EDITs associated with the divested generation assets and the Commission will not in this, or any other proceeding, flow through to customers, directly or indirectly, any of the benefit associated with such unamortized ITCs or EDITs.

In addition, under the terms of the Stipulation, the Company agrees to withdraw its Law Court appeal of the Commission's decision in Phase I concerning the allocation of generation sale asset proceeds between CMP and its affiliate, Union Water Power Company. Finally, CMP agrees not to appeal the Commission's decision in Docket No. 99-195, concerning the treatment of certain gains on the sales of rights-of-way easements to gas utilities for natural gas pipelines.

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[1] A copy of the Stipulation is attached to this Order as Appendix A.

B. Ratemaking Treatment of Millstone 3 Settlement

On August 7, 1997, CMP and the other minority owners of Millstone 3 filed judicial and arbitration proceedings against Northeast Utilities and its subsidiaries (NU) seeking to recover damages for the mismanagement of the plant resulting in significant replacement power costs and incremental operations and maintenance costs. CMP and NU are prepared to execute a settlement agreement (the Settlement Agreement) to resolve the litigation and provide for the sale of CMP's 2.5% ownership interest in Millstone 3 as part of NU's divestiture process. The Settlement Agreement has been filed with this Commission in Docket No. 99-928, in which CMP asked the Commission to waive jurisdiction over the transaction or, in the alternative, to permit its consummation with a reservation of ratemaking authority over the proceeds from the settlement.

Under the provisions of the Stipulation, the parties agree to the prudence of the CMP/NU Settlement Agreement and to the ratemaking treatment of proceeds of the agreement. Specifically, CMP will be allowed to retain the first payment under the Stipulation Agreement in recognition of costs incurred by CMP while it operated under its recently concluded Alternative Rate Plan. The second payment due under the Settlement Agreement, to be made at the closing of the sale of Millstone 3, will inure to the benefit of CMP's customers.[2] In addition, $88,226,000, consisting of the undepreciated Millstone 3 plant balance, the regulatory asset created by the Company related to what it believed was the impairment resulting from restructuring, the non-provided for income taxes on the plant and the Millstone 3 materials and supplies account, be written off against the Asset Sale Gain Account (ASGA) on March 1, 2000. Finally, to allow CMP to deduct the decommissioning payments for Millstone 3 made after February 29, 2000, on its tax returns, the parties agree that the Financing Plan for decommissioning costs established by the Connecticut Department of Public Utility Control on February 5, 1999, including the 5.3% after-tax rate of return on the decommissioning fund, is reasonable for ratemaking purposes.

C. Revenue Requirement Adjustments

Under the provisions of the Stipulation, the parties agree to three major revenue requirement adjustments. First, they agree that $9.4 million of net QF savings from calendar year 1999, the final year of the ARP, be applied against stranded cost revenue requirements over a 2-year period commencing on March 1, 2000. In addition, the Company agrees to reduce stranded costs over the initial stranded cost rate setting period (two years) by the greater of $15 million, or 50% of 1999 earnings in excess of a 12.5% return on actual company equity if the excess earnings exceed $20 million. Finally, CMP will be allowed to recover in rates, over 5 years, a $1,074,000 loss incurred on the sale of its former York service building.

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[2] The amounts of the first and second payments are currently designated confidential business information under Temporary Protective Order No. 1, in Docket No. 99-928. The amounts of the payments are set forth in Confidential Appendix B which will be distributed in accordance with the terms of the protective order.

D. Alternative Amortization Scenarios

The Stipulation proposes two alternative scenarios for the Commission's consideration related to amortizing the Asset Sale Gain Account. The choice of amortization approaches is tied to the Commission's decision whether to accept the increase in standard offer prices for the medium and large classes proposed by CMP.

On January 11, 2000, CMP made two separate but related filings. First, in Docket No. 99-111, the Company asked the Commission to increase the administratively set standard offer prices for the medium and large classes because CMP's experience in the power market had made it clear that it could not procure a power supply and provide standard offer service at the prices previously set by the Commission.[3] On average, the Company requested that the prices be increased to approximately $.055 and $.050 for the medium and large classes, respectively. At the same time, in this docket, the Company submitted a revised filing which modified the amortization of the Asset Sale Gain Account (ASGA) to eight years.[4] On January 21, 2000, the Company filed a revised request to increase the standard offer prices on average by $.002 to reflect the increased prices in the Installed Capacity (ICAP) market. Because of the interplay between standard offer prices and the goal of minimizing negative rate impacts upon the implementation of retail choice, the parties provided the Commission with the two alternative amortization approaches to the ASGA.

Under both scenarios the ASGA amortizations are based on a projected 8.5 years amortization period. Under Scenario 1, the amortizations in years 1 and 2 are reduced by the amortizations of the 1999 QF savings and the earnings sharings agreed to in the Stipulation, *see* Section III.B, *supra*. To levelize stranded costs over the 2-year stranded cost period, $24,528,000 would be amortized during the period March 1, 2000 through February 28, 2001 and $17,155,000 would be amortized over the period March 1, 2001 through February 28, 2002. Under Scenario 2, available under the Stipulation only if the Commission chooses to adopt standard offer prices that are higher than those proposed in CMP's January 11, 2000 filing, the ASGA would be amortized over a straight 8.5-year period. For the initial 2-year period, the annual amortization would be $33,554,000 and $26,693,000. The amortizations of the QF buy-out and earnings sharing benefits would then be added to these amounts.

[3] By Order dated October 25, 1999, in Docket No. 99-111, the Commission accepted the bid of Energy Atlantic to provide standard offer service to CMP's residential and small commercial customers at a price of $.04089/kWh. Also in that Order, the Commission rejected the standard offer bids for medium and large commercial and industrial customers and sought a second round of proposals. By Order dated December 3, 1999, in Docket No. 99-111, the Commission again rejected the standard offer bids for CMP's medium and large classes. The Commission administratively set the price for that standard offer service at $.04089/kWh.

[4] The ASGA amortization period proposed in the Company's original filing (corrected) was approximately 37 years.

E. Rate Design Proposals

Under CMP's current rate structure, the Company's kWh charge increases by 25% after the first 400 kWhs of monthly usage. In Phase I, we concluded that there was no cost basis for using an inverted block rate structure for a T&D only company and that the inverted block should be reduced or eliminated consistent with our "no losers" principle. The Stipulation eliminates Rate A without creating rate design losers.

The stipulating parties allocated CMP's T&D revenues and designed rates using the following approach. First, the total amount of revenues required from core sales was determined by subtracting from CMP's overall revenue requirement an amount of revenue expected from non-core sales.[5] Second, the current bundled rate elements in each core class, with the exception of LGS-ST and LGS-T, were reduced by 9.81%; the rate elements in the LGS-ST and LGS-T classes were reduced by half that, or 4.91%, consistent with prior Commission decisions in this case. Third, in each class but LGS-ST and LGS-T, the current bundled kWh charges were further reduced by subtracting a class-specific "energy backout" rate that reflected a market energy purchase price for the class. Although the Stipulation contains no explicit "energy backout" rate for the LGS-ST and LGS-T classes, the kWh charges for these classes appear to be consistent with the resulting charges for CMP's other core customer classes.

F. Deferral of Certain Costs

During the course of this case, the Company has requested a variety of accounting orders which would allow it to defer certain costs for future recovery in rates. The Stipulation allows the Company to defer the following costs, which in certain instances may be negative, for future collection or reduction in rates:

1. the incremental costs of complying with P.L. 1999, ch. 193, An Act to Protect the Environment by Phasing Out the Use of Old Transformers that are Potential Sources of PCB Pollution;

2. differences between the actual prices paid to supply Somerset and United Energy Corp. and prices assumed in setting rates in this proceeding;

3. differences between T&D rates assumed for non-core customers under unbundled existing contracts and ARP comparable renewals and rates actually paid by such customers;

4. differences between the transitional power supply projections used in setting rates and actual transitional power supply costs based upon actual hydro deliveries and updated oil price projections;

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[5] Pursuant to paragraph 28 of the Stipulation, CMP is allowed to defer for future recovery differences between assumed non-core T&D prices and T&D prices non-core customers actually pay.

5. environmental remediation costs related to the divested generation assets that exceed $1.548 million;

6. amounts for other costs or refunds related to the divested generation assets that are not reflected in the determination of available value in this proceeding; and

7. outside legal costs and payments made in connection with the action of the joint owners of Wyman 4 against CMP.

Items 4 through 7 would be recovered through an offset against the ASGA unless the Commission finds such expenditures were incurred imprudently.

IV. OPPOSITION TO THE STIPULATION

On January 27, 2000, S.D. Warren, Inc. (S.D. Warren), FPL Energy Maine, Inc. (FPL), and the Independent Energy Producers of Maine (IEPM) filed comments in opposition to the Stipulation (collectively referred to as the "Opponents"). The Opponents note that under paragraph 18 of the Stipulation, CMP agrees that it will not take action to undermine the Commission's Phase II Order as it applies to Rate O and Rate SB in any way, in any jurisdiction. The Opponents argue that despite this provision, CMP is pursuing changes to its Open Access Transmission Tariff (OATT) at the FERC that would dramatically increase charges to its Rate SB customers. Specifically, according to the Opponents, the CMP OATT revisions would apply the so-called "behind the meter generation" concept to retail customers with generation who are not directly connected to the pool transmission facilities (PTF). Under the "behind the meter generation" approach, in determining the billing demand for a retail customer with generation, CMP would ignore the customer's actual consumption and bill the customer as if the customer were imposing its full maximum demand on the T&D system at the time of the monthly peak, for every month of the year. This position, according to the Opponents, substantially undermines the Commission's Phase II Order which retained Rate SB under the "no losers principle."

While recognizing that the Commission has no jurisdiction over CMP's OATT, S.D. Warren, FPL and IEPM state that they cannot support the Stipulation, given the inconsistency of CMP's FERC proposal with paragraph 18 of the stipulation and with the Commission's "no losers principle."

V. DECISION

In past cases, we have applied the following criteria when considering stipulations:

1. whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement; and

2. whether the process that led to the stipulation was fair to all parties; and

3. whether the stipulated result is reasonable and is not contrary to legislative mandate.

See Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design)*, Docket No. 95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the proposed Stipulation in this case meets all of the above criteria.

The Stipulation was entered into by the Company, the Office of the Public Advocate and the IECG. We are satisfied that these parties represent a broad spectrum of interests and that there is no appearance, or reality, of disenfranchisement. The Stipulation was executed after the Commission had issued its decisions in Phases I and II of this docket. These phases of the case were extensively litigated, and all parties had an opportunity to present their views to the Commission. The settlement conferences in the Phase II-B proceeding were duly noticed, and there has been no indication that any party was denied access. We thus find that the process that led to the Stipulation was fair to all parties.

We next address the questions of whether the stipulated result is reasonable and consistent with legislative mandates and whether the overall result is consistent with the public interest. We began this proceeding more than two and half years ago as part of our implementation of the Legislature's mandate that we provide consumers in Maine with the opportunity to shop for generation services beginning March 1, 2000. As part of the restructuring process, the Commission was required to conduct a stranded cost, T&D revenue requirement and rate design proceeding for each investor-owned utility. 35-A M.R.S.A. § 3208. Three major ratemaking issues remained after our decisions in Phase I and II: what amount of the available value (now referred to as the Asset Sale Gain Account) should be used to reduce stranded costs over the initial 2-year stranded cost period; how to implement the "top-down" rate design methodology we adopted in Phase I, and, finally, to what extent should residential Rate A be flattened. As reflected in our comments below, we believe all of these issues have been addressed by the Stipulation in a manner that is reasonable and consistent with the public interest.

As discussed in Section III.D, the Stipulation provides the Commission with an alternative ASGA amortization scenario if the Commission sets standard offer prices higher than those proposed by CMP on January 11, 2000 in Docket No. 99-111. In an Order dated February 11, 2000 in Docket No. 99-111, we accepted the Company's higher standard offer proposal of January 20, 2000, which has the effect of raising standard offer prices by 0.2¢/per kWh for these classes. We do not believe, however, that this decision warrants the accelerated ASGA amortization allowed for under Scenario 2 of the Stipulation.

Under Scenario 1, all revenue classes should receive substantial rate decreases. Assuming that customers can obtain in the market energy rates comparable to those utilized in the top-down methodology, average bundled rates for all classes will decrease by 9.81%. The Company was also able to remove the inverted block structure and levelize Rate A without creating "losers" within the residential rate class. Based on the bill impact analysis provided by the Company when it filed the Stipulation, it appears that a small number of customers in the medium and large commercial classes will receive total bill increases after March 1, 2000 should they remain on the standard offer. We believe that such adverse bill impacts can be substantially mitigated if such customers go into the market where they should be able to obtain prices significantly better than the standard offer prices for medium and large class customers.

Increasing the ASGA amortizations as provided in Scenario 2 would certainly lower T&D rates for both those medium and large class customers as well as other customers already receiving significant rate reductions. Under Scenario 2, however, it would be necessary, all else being equal, to increase rates by $10 million in March 2002 after the 1999 earnings sharing and QF savings amortizations expire. In addition, by using more available value now, our ability in the future to smooth the impact of future rate changes caused by increases in the standard offer price or by T&D rate design changes would be diminished. We conclude that the near term benefits provided by the faster ASGA amortization of Scenario 2 are outweighed by the harm of possible rate increases in the future as well by the loss of flexibility to manage any future adverse rate impacts as we go forward with electric restructuring.

We thus select Scenario 1 and find that the amortization of the ASGA presented therein is reasonable and in the public interest. The total adjusted test year revenue requirement under amortization Scenario 1 is $415,130,000, consisting of a T&D revenue requirement of $269,251,000 and a stranded cost revenue requirement levelized over the initial 2-year stranded cost period of $145,879,000.

The revenue allocation and rate design reflected in the Stipulation comport with the principles we adopted in Phase I of this case. Although not a strict application of the top down method described in the Phase I Order, the Stipulation reasonably achieves the same objectives by unbundling CMP's current rates from the top down using relative generation costs, thereby producing T&D rates that, when combined with likely market prices for energy, will minimize adverse customer bill impacts.

We also find that the Stipulation under Scenario 1 has accomplished the flattening of Rate A in a reasonable manner. Residential rates overall, when combined with standard offer prices, will be reduced by 9.8% compared to current bundled rates. For customers using between 100 and 400 kWh, the overall rates will decrease by approximately 1.4%. The Stipulation thus accomplishes our goal of eliminating the inverted block structure of Rate A without creating rate design "losers." Again, we find this provision to be reasonable and consistent with the public interest.

As discussed above, S.D. Warren, FPL and IEPM oppose the Stipulation since they believe CMP is acting inconsistently with the Commission's Phase II Order and with paragraph 18 of the Stipulation, which provides that CMP will not take any action in any jurisdiction to undermine the Commission's Phase II Order as it applies to Rate SB.

In our Phase II Order, we decided that consistent with the no-losers principle, a T&D version of Rate SB should be continued. We concluded that the T&D version of Rate SB should have the following components:

- $2,000 per month fixed charge;
- usage paid for under the applicable all-requirements tariff, with the demand charge prorated for the number of days service is taken (for distribution level customers, only the distribution portion of the demand charge will be prorated); and
- transmission charge pursuant to the OATTs or the retail transmission charge (as applicable).

We noted, in our Phase II decision, that consistent with the no-losers principle, the current Rate SB provisions, which require SB customers to pay the customer charge as well as the demand and energy charges in the all-requirements tariff in any month they take service, should be maintained.

As S.D. Warren, FPL and IEPM recognize, this Commission does not have jurisdiction to decide whether CMP's OATT is proper or not. By agreeing not to undermine the Commission's Phase II Order as it applies to Rate SB in any way, in any jurisdiction, the Company seems to have conferred upon the parties additional rights that they otherwise would not have had. The argument hat CMP has violated a commitment made in the Stipulation (or elsewhere) provides no logical basis upon which to reject the Stipulation itself. Indeed, by its own terms, the objection of the Opponents is not with the Stipulation but with the alleged failure of CMP to honor it.

Finally, we find that the other restructuring related litigation issues which have been addressed by the Stipulation and are discussed in detail in Sections III.A, B and C, above, have been settled in a manner that provides substantial benefits overall to the Company's ratepayers and is consistent with the public interest. In making this finding, we approve the ratemaking treatment of the proceeds from the Company's settlement with NU and the transfer of ownership of its interest in Millstone 3. In a companion order issued this date, in Docket No. 99-928, we approve CMP's plan to divest its ownership in Millstone 3 and the transfer of ownership to the entity that purchases the joint ownership now controlled by NU. In Docket No. 99-928, we had previously noticed CMP's request to defer the ratemaking treatment of the Millstone 3 settlement and sale proceeds to the next stranded cost investigation. We find that it is reasonable to resolve these issues as part of the Stipulation proposed in this proceeding, given that ratepayers receive substantial benefits when the Stipulation is viewed as a package and that all the active parties in the divestitures dockets (Docket Nos. 99-928, 98-058 and 97-523) are also parties in this proceeding.

Accordingly, it is

O R D E R E D

1. That the January 25, 2000 Stipulation filed in this proceeding is approved. A copy of the Stipulation is attached hereto and is incorporated by reference.

2. That the Company's Asset Sale Gain Account shall be amortized in accordance with "Scenario 1" as set forth in paragraph 25 of the Stipulation.

3. That the Company shall file rate schedules designed to collect revenues of $415,130,000 to take effect on March 1, 2000, in accordance with the Stipulation.

4. That the Accounting Orders proposed in paragraphs 28 and 29 of the Stipulation are granted.

5. That the Financing Plan established by the Connecticut Department of Public Utility Control for Millstone 3 decommissioning costs, including CMP's share of decommissioning costs, as well as the 5.3% after-tax rate of return for the decommissioning fund, is approved.

Dated at Augusta, Maine, this 24th day of February, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

This Document has been designated for publication

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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